In the Supreme Court of the United States

OCTOBER TERM, 1966

No. —

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE ACH CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case, but only if the Court grants the petition for a writ of certiorari filed by Pauline W. Ach, *et al.*, in a companion case, No. 396, this Term.

OPINIONS BELOW

The opinion of the Tax Court (R. 87a–110a)[1] is reported at 42 T.C. 114. The opinion of the court of appeals is reported at 358 F. 2d 342.[2]

[1] "R." references are to the appendix to the taxpayers' brief in the court of appeals, nine copies of which have been filed with the petition in No. 396, this Term.

[2] The opinion and judgment of the court of appeals in this case are reprinted as Appendix A, pp. 1a–9a, and Appendix E, p. 13a, to the petition in No. 396.

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JURISDICTION

The judgment of the court of appeals was entered on March 30, 1966. By order dated June 21, 1966, Mr. Justice Stewart extended the time for filing a petition for certiorari to and including August 17, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Commissioner correctly reallocated and taxed income, initially reported by a corporation, to the individual who generated it.

STATUTE INVOLVED

Internal Revenue Code of 1954:

> SEC. 482. ALLOCATION OF INCOME AND DEDUCTIONS AMONG TAXPAYERS
>
> In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

(26 U.S.C. (1958 ed.) 482.)

STATEMENT AND REASONS FOR GRANTNG THE WRIT

The facts are fully set forth in the petition for certiorari filed in the companion case, No. 396, this Term, and in the court of appeals opinion which is printed as an appendix to that petition (Pet. in No. 396, pp. 3–5, 1a–9a). The question presented by the cases (which were consolidated in the lower courts) is whether the income earned by a certain business is taxable to the Ach Corporation (the taxpayer in this case) or to Pauline W. Ach (one of the petitioners in No. 396) or in part to each. The Tax Court found, *inter alia,* that the income in question was taxable 30 percent to the Ach Corporation and 70 percent to Pauline W. Ach. The court of appeals affirmed on this issue. We agree with this determination and intend to oppose the petition for certiorari in No. 396. If, however, the Court should grant Pauline W. Ach's petition for certiorari in No. 396 and thereafter hold that less than 70 percent of the income was taxable to her, the amount taxable to the Ach Corporation would be correspondingly increased. Therefore, we are filing the instant petition for certiorari to protect the revenue if the Court should grant certiorari in No. 396.

CONCLUSION

If the petition for certiorari in No. 396, this Term, is granted, this petition should also be granted. Otherwise it should be denied.

Respectfully submitted,

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AUGUST, 1966.

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